

110TH CONGRESS
2D SESSION

S. 3629

To create a new Consumer Credit Safety Commission, to provide individual consumers of credit with better information and stronger protections, and to provide sellers of consumer credit with more regulatory certainty.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26 (legislative day, SEPTEMBER 17), 2008

Mr. DURBIN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To create a new Consumer Credit Safety Commission, to provide individual consumers of credit with better information and stronger protections, and to provide sellers of consumer credit with more regulatory certainty.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Consumer Credit Safety Commission Act of 2008”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Definitions.

Sec. 4. Establishment of Commission.
 Sec. 5. Authorization of appropriations.
 Sec. 6. Objectives and responsibilities.
 Sec. 7. Coordination of enforcement.
 Sec. 8. Authorities.
 Sec. 9. Collaboration with Federal and State entities.
 Sec. 10. Procedures and rulemaking.
 Sec. 11. Prohibited acts.
 Sec. 12. Penalties for violations.
 Sec. 13. Reports.
 Sec. 14. Effective date.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) the Nation’s multi-agency financial services
 4 regulatory structure has created a dispersion of reg-
 5 ulatory responsibility, which in turn has led to an in-
 6 adequate focus on protecting consumers from inap-
 7 propriate consumer credit practices;

8 (2) the absence of appropriate oversight has al-
 9 lowed excessively costly or predatory consumer credit
 10 products to flourish; and

11 (3) the creation of a regulator whose sole focus
 12 is the safety of consumer credit products would help
 13 address this lack of consumer protection.

14 **SEC. 3. DEFINITIONS.**

15 For purposes of this Act—

16 (1) the term “consumer credit” includes—

17 (A) any payment compensating a creditor
 18 or prospective creditor, or an agent or affiliate
 19 thereof, for an extension of credit or making
 20 available a line of credit;

1 (B) any fees connected with credit exten-
2 sion or availability, such as numerical periodic
3 rates, late fees, creditor-imposed not sufficient
4 funds fees charged when a borrower tenders
5 payment on a debt with a check drawn on in-
6 sufficient funds, over limit fees, annual fees,
7 cash advance fees, or membership fees;

8 (C) any fees which constitute a finance
9 charge;

10 (D) credit insurance premiums;

11 (E) all charges and costs for ancillary
12 products sold in connection with or incidental to
13 the credit transaction; and

14 (F) any direct or indirect fee, cost, or
15 charge incurred in, in connection with, or ancil-
16 lary to a consumer payment system, including
17 but not exclusive to merchant discount fees,
18 interchange fees, debit card fees, check-writing
19 fees, automated clearinghouse fees, payment-by-
20 phone fees, internet payment intermediary fees,
21 and remote deposit capture fees;

22 (2) the term “relevant congressional commit-
23 tees” means the Committee on Banking, Housing,
24 and Urban Affairs and the Subcommittee on Finan-
25 cial Services and General Government of the Com-

1 mittee on Appropriations of the Senate, and the
 2 Committee on Financial Services and the Sub-
 3 committee on Financial Services and General Gov-
 4 ernment of the Committee on Appropriations of the
 5 House of Representatives, and any successor com-
 6 mittees as may be constituted;

7 (3) the term “creditor” has the same meaning
 8 as in section 103 of the Truth in Lending Act (15
 9 U.S.C. 1602);

10 (4) the term “finance charge” has the same
 11 meaning as in section 106 of the Truth in Lending
 12 Act (15 U.S.C. 1605); and

13 (5) the term “consumer” means any natural
 14 person and any small business concern, as defined in
 15 section 3 of the Small Business Act (15 U.S.C.
 16 632).

17 **SEC. 4. ESTABLISHMENT OF COMMISSION.**

18 (a) ESTABLISHMENT; CHAIRPERSON.—

19 (1) IN GENERAL.—An independent regulatory
 20 commission is hereby established, to be known as the
 21 “Consumer Credit Safety Commission” (in this Act
 22 referred to as the “Commission”), consisting of 5
 23 Commissioners appointed by the President, by and
 24 with the advice and consent of the Senate.

1 (2) MEMBERSHIP.—In making appointments to
2 the Commission, the President shall consider individ-
3 uals who, by reason of their background and exper-
4 tise in areas related to consumer credit, are qualified
5 to serve as members of the Commission.

6 (3) CHAIRPERSON.—The Chairperson shall be
7 appointed by the President, by and with the advice
8 and consent of the Senate, from among the members
9 of the Commission. An individual may serve as a
10 member of the Commission and as Chairperson at
11 the same time.

12 (4) REMOVAL.—Any member of the Commis-
13 sion may be removed by the President for neglect of
14 duty or malfeasance in office, but for no other cause.

15 (b) TERM; VACANCIES.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2)—

18 (A) the Commissioners first appointed
19 under this section shall be appointed for terms
20 ending 3, 4, 5, 6, and 7 years, respectively,
21 after the date of enactment of this Act, the
22 term of each to be designated by the President
23 at the time of nomination; and

24 (B) each of their successors shall be ap-
25 pointed for a term of 5 years from the date of

1 the expiration of the term for which the prede-
2 cessor was appointed.

3 (2) LIMITATIONS.—Any Commissioner ap-
4 pointed to fill a vacancy occurring prior to the expi-
5 ration of the term for which his predecessor was ap-
6 pointed shall be appointed only for the remainder of
7 such term. A Commissioner may continue to serve
8 after the expiration of this term until a successor
9 has taken office, except that such Commissioner may
10 not continue to serve more than 1 year after the
11 date on which the term of that Commissioner would
12 otherwise expire under this subsection.

13 (c) RESTRICTIONS ON OUTSIDE ACTIVITIES.—

14 (1) POLITICAL AFFILIATION.—Not more than 3
15 of the Commissioners shall be affiliated with the
16 same political party.

17 (2) CONFLICTS OF INTEREST.—No individual
18 may hold the office of Commissioner if that indi-
19 vidual—

20 (A) is in the employ of, or holding any offi-
21 cial relation to, or married to any person en-
22 gaged in selling or devising consumer credit;

23 (B) owns stock or bonds of substantial
24 value in a person so engaged;

1 (C) is in any other manner pecuniarily in-
2 terested in such a person, or in a substantial
3 supplier of such a person; or

4 (D) engages in any other business, voca-
5 tion, or employment.

6 (d) QUORUM; SEAL; VICE CHAIRPERSON.—

7 (1) QUORUM.—No vacancy in the Commission
8 shall impair the right of the remaining Commis-
9 sioners to exercise all the powers of the Commission,
10 but 3 members of the Commission shall constitute a
11 quorum for the transaction of business, except that
12 if there are only 3 members serving on the Commis-
13 sion because of vacancies in the Commission, 2
14 members of the Commission shall constitute a
15 quorum for the transaction of business, and if there
16 are only 2 members serving on the Commission be-
17 cause of vacancies in the Commission, 2 members
18 shall constitute a quorum for the 6-month period (or
19 the 1-year period, if the 2 members are not affiliated
20 with the same political party) beginning on the date
21 of the vacancy which caused the number of Commis-
22 sion members to decline to 2.

23 (2) SEAL.—The Commission shall have an offi-
24 cial seal of which judicial notice shall be taken.

1 (3) VICE CHAIRPERSON.—The Commission
 2 shall annually elect a Vice Chairperson to act in the
 3 absence or disability of the Chairperson or in case
 4 of a vacancy in the office of the Chairperson.

5 (e) OFFICES.—The Commission shall maintain a
 6 principal office and such field offices as it deems nec-
 7 essary, and may meet and exercise any of its powers at
 8 any other place.

9 (f) FUNCTIONS OF CHAIRPERSON; REQUEST FOR AP-
 10 PROPRIATIONS.—

11 (1) DUTIES.—The Chairperson of the Commis-
 12 sion shall be the principal executive officer of the
 13 Commission, and shall exercise all of the executive
 14 and administrative functions of the Commission, in-
 15 cluding functions of the Commission with respect
 16 to—

17 (A) the appointment and supervision of
 18 personnel employed under the Commission (and
 19 the Commission shall fix their compensation at
 20 a level comparable to that for employees of the
 21 Securities and Exchange Commission);

22 (B) the distribution of business among per-
 23 sonnel appointed and supervised by the Chair-
 24 person and among administrative units of the
 25 Commission; and

1 (C) the use and expenditure of funds.

2 (2) GOVERNANCE.—In carrying out any of the
3 functions of the Chairperson under this subsection,
4 the Chairperson shall be governed by general policies
5 of the Commission and by such regulatory decisions,
6 findings, and determinations as the Commission
7 may, by law, be authorized to make.

8 (3) REQUESTS FOR APPROPRIATIONS.—Re-
9 quests or estimates for regular, supplemental, or de-
10 ficiency appropriations on behalf of the Commission
11 may not be submitted by the Chairperson without
12 the prior approval of the Commission.

13 (g) AGENDA AND PRIORITIES; ESTABLISHMENT AND
14 COMMENTS.—At least 30 days before the beginning of
15 each fiscal year, the Commission shall establish an agenda
16 for Commission action under its jurisdiction and, to the
17 extent feasible, shall establish priorities for such actions.
18 Before establishing such agenda and priorities, the Com-
19 mission shall conduct a public hearing on the agenda and
20 priorities, and shall provide reasonable opportunity for the
21 submission of comments.

22 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

23 There are authorized to be appropriated for purposes
24 of carrying out this Act such sums as may be necessary.

1 **SEC. 6. OBJECTIVES AND RESPONSIBILITIES.**

2 (a) OBJECTIVES.—The objectives of the Commission
3 are—

4 (1) to minimize unreasonable consumer risk as-
5 sociated with buying and using consumer credit;

6 (2) to prevent and eliminate unfair practices
7 that lead consumers to incur unreasonable, inappro-
8 priate, or excessive debt, or make it difficult for con-
9 sumers to escape existing debt, including practices
10 or product features that are abusive, fraudulent, un-
11 fair, deceptive, predatory, anticompetitive, or other-
12 wise inconsistent with consumer protection;

13 (3) to promote practices that assist and encour-
14 age consumers to use credit responsibly, avoid exces-
15 sive debt, and avoid unnecessary or excessive
16 charges derived from or associated with credit prod-
17 ucts;

18 (4) to ensure that credit history is maintained,
19 reported, and used fairly and accurately;

20 (5) to maintain strong privacy protections for
21 consumer credit transactions, credit history, and
22 other personal information associated with the use of
23 consumer credit;

24 (6) to collect, investigate, resolve, and inform
25 the public about consumer complaints regarding con-
26 sumer credit;

1 (7) to ensure a fair system of consumer dispute
2 resolution in consumer credit; and

3 (8) to take such other steps as are reasonable
4 to protect consumers of credit products.

5 (b) RESPONSIBILITIES.—The Commission shall—

6 (1) promulgate consumer credit safety rules
7 that—

8 (A) ban abusive, fraudulent, unfair, decep-
9 tive, predatory, anticompetitive, or otherwise
10 anti-consumer practices or product features for
11 creditors;

12 (B) place reasonable restrictions on con-
13 sumer credit practices or product features to re-
14 duce the likelihood that they may be provided
15 in a manner that is inconsistent with the objec-
16 tives specified in subsection (a); and

17 (C) establish requirements for such clear
18 and adequate warnings or other information,
19 and the form of such warnings or other infor-
20 mation, as may be appropriate to advance the
21 objectives specified in subsection (a);

22 (2) establish and maintain a best practices
23 guide for all providers of consumer credit;

1 (3) conduct such continuing studies and inves-
 2 tigations of consumer credit industry practices as it
 3 deems necessary;

4 (4) award grants or enter into contracts for the
 5 conduct of such studies and investigations with any
 6 person (including a governmental entity);

7 (5) following publication of an advance notice of
 8 proposed rulemaking, a notice of proposed rule-
 9 making, or a rule under any rulemaking authority
 10 administered by the Commission, assist public and
 11 private organizations or groups of consumer credit
 12 providers, administratively and technically, in the de-
 13 velopment of consumer credit safety standards or
 14 guidelines that would assist such providers in com-
 15 plying with such rule; and

16 (6) establish and operate a consumer credit cus-
 17 tomer hotline which consumers can call to register
 18 complaints and receive information on how to com-
 19 bat anti-consumer consumer credit.

20 **SEC. 7. COORDINATION OF ENFORCEMENT.**

21 (a) IN GENERAL.—Notwithstanding any concurrent
 22 or similar authority of any other agency, the Commission
 23 shall enforce the requirements of this Act.

24 (b) RULE OF CONSTRUCTION.—The authority grant-
 25 ed to the Commission to make and enforce rules under

1 this Act shall not be construed to impair the authority
 2 of any other Federal agency to make and enforce rules
 3 under any other provision of law, provided that any por-
 4 tion of any rule promulgated by any other such agency
 5 that conflicts with a rule promulgated by the Commission
 6 and that is less protective of consumers than the rule pro-
 7 mulgated by the Commission shall be superseded by the
 8 stronger rule promulgated by the Commission, to the ex-
 9 tent of the conflict. Any portion of any rule promulgated
 10 by any other such agency that is not superseded by a rule
 11 promulgated by the Commission shall remain in force
 12 without regard to this Act.

13 (c) AGENCY AUTHORITY.—Any agency designated in
 14 subsection (d) may exercise, for the purpose of enforcing
 15 compliance with any requirement imposed under this Act,
 16 any authority conferred on such agency by any other Act.

17 (d) DESIGNATED AGENCIES.—The agencies des-
 18 ignated in this subsection are—

19 (1) the Board of Governors of the Federal Re-
 20 serve System;

21 (2) the Federal Deposit Insurance Corporation;

22 (3) the Office of the Comptroller of the Cur-
 23 rency;

24 (4) the Office of Thrift Supervision;

25 (5) the National Credit Union Administration;

- 1 (6) the Federal Housing Finance Authority;
2 (7) the Federal Housing Administration;
3 (8) the Secretary of Housing and Urban Devel-
4 opment;
5 (9) the Federal Home Loan Bank Board; and
6 (10) the Federal Trade Commission.

7 **SEC. 8. AUTHORITIES.**

8 (a) **AUTHORITY TO CONDUCT HEARINGS OR OTHER**
9 **INQUIRIES.**—The Commission may, by one or more of its
10 members or by such agents or agency as it may designate,
11 conduct any hearing or other inquiry necessary or appro-
12 priate to its functions anywhere in the United States. A
13 Commissioner who participates in such a hearing or other
14 inquiry shall not be disqualified solely by reason of such
15 participation from subsequently participating in a decision
16 of the Commission in the same matter. The Commission
17 shall publish notice of any proposed hearing in the Federal
18 Register, and shall afford a reasonable opportunity for in-
19 terested persons to present relevant testimony and data.

20 (b) **COMMISSION POWERS; ORDERS.**—The Commis-
21 sion shall have the power—

- 22 (1) to require, by special or general orders, any
23 person to submit in writing such reports and an-
24 swers to questions as the Commission may prescribe
25 to carry out a specific regulatory or enforcement

1 function of the Commission, and such submission
2 shall be made within such reasonable period and
3 under oath or otherwise as the Commission may de-
4 termine, and such order shall contain a complete
5 statement of the reasons that the Commission re-
6 quires the report or answers specified in the order
7 to carry out a specific regulatory or enforcement
8 function of the Commission, and shall be designed to
9 place the least burden on the person subject to the
10 order as is practicable, taking into account the pur-
11 pose for which the order was issued;

12 (2) to administer oaths;

13 (3) to require by subpoena the attendance and
14 testimony of witnesses and the production of all doc-
15 umentary evidence relating to the execution of its
16 duties;

17 (4) in any proceeding or investigation to order
18 testimony to be taken by deposition before any per-
19 son who is designated by the Commission and has
20 the power to administer oaths and, in such in-
21 stances, to compel testimony and the production of
22 evidence in the same manner as authorized under
23 paragraph (3);

1 (5) to pay witnesses the same fees and mileage
2 as are paid in like circumstances in the courts of the
3 United States;

4 (6) to accept voluntary and uncompensated
5 services relevant to the performance of the Commis-
6 sion's duties, notwithstanding the provisions of sec-
7 tion 1342 of title 31, United States Code, and to ac-
8 cept voluntary and uncompensated services (but not
9 gifts) relevant to the performance of the Commis-
10 sion's duties, provided that any such services shall
11 not be from parties that have or are likely to have
12 business before the Commission;

13 (7) to—

14 (A) initiate, prosecute, defend, intervene
15 in, or appeal (other than to the Supreme Court
16 of the United States), through its own legal
17 representative and in the name of the Commis-
18 sion, any civil action if the Commission makes
19 a written request to the Attorney General of the
20 United States for representation in such civil
21 action and the Attorney General does not with-
22 in the 45-day period beginning on the date such
23 request was made notify the Commission in
24 writing that the Attorney General will represent
25 the Commission in such civil action; and

1 (B) whenever the Commission obtains evi-
2 dence that any person, partnership, or corpora-
3 tion, either domestic or foreign, has engaged in
4 conduct that may constitute a violation of Fed-
5 eral criminal law, including a violation of sec-
6 tion 11 of this Act, transmit such evidence to
7 the Attorney General of the United States, who
8 may institute criminal proceedings under appro-
9 priate statutes; and

10 (8) to delegate any of its functions or powers,
11 other than the power to issue subpoenas under para-
12 graph (3), to any officer or employee of the Commis-
13 sion.

14 (c) NONCOMPLIANCE WITH SUBPOENA OR COMMIS-
15 SION ORDER; CONTEMPT.—Any United States district
16 court within the jurisdiction of which any inquiry is car-
17 ried on, may, upon petition by the Commission (subject
18 to subsection (b)(7)) or by the Attorney General of the
19 United States, in case of refusal to obey a subpoena or
20 order of the Commission issued under subsection (b), issue
21 an order requiring compliance therewith. Any failure to
22 obey the order of the court may be punished by the court
23 as a contempt thereof.

24 (d) DISCLOSURE OF INFORMATION.—No person shall
25 be subject to civil liability to any person (other than the

1 Commission or the United States) for disclosing informa-
2 tion to the Commission.

3 (e) CUSTOMER AND REVENUE DATA.—The Commis-
4 sion may by rule require any provider of consumer credit
5 to provide to the Commission such customer and revenue
6 data as may be required to carry out the purposes of this
7 Act.

8 (f) PURCHASE OF CONSUMER CREDIT BY COMMIS-
9 SION.—For purposes of carrying out this Act, the Com-
10 mission may purchase any consumer credit, and it may
11 require any provider of consumer credit to sell the service
12 to the Commission at cost.

13 (g) CONTRACT AUTHORITY.—The Commission is au-
14 thorized to enter into contracts with governmental entities,
15 private organizations, or individuals for the conduct of ac-
16 tivities authorized by this Act.

17 (h) BUDGET ESTIMATES AND REQUESTS; LEGISLA-
18 TIVE RECOMMENDATIONS; TESTIMONY; COMMENTS ON
19 LEGISLATION.—

20 (1) BUDGET COPIES TO CONGRESS.—Whenever
21 the Commission submits any budget estimate or re-
22 quest to the President or the Office of Management
23 and Budget, it shall concurrently transmit a copy of
24 that estimate or request to the relevant congres-
25 sional committees.

1 (2) LEGISLATIVE RECOMMENDATION.—When-
2 ever the Commission submits any legislative rec-
3 ommendations, or testimony, or comments on legis-
4 lation to the President or the Office of Management
5 and Budget, it shall concurrently transmit a copy
6 thereof to the relevant congressional committees. No
7 officer or agency of the United States shall have any
8 authority to require the Commission to submit its
9 legislative recommendations, or testimony, or com-
10 ments on legislation, to any officer or agency of the
11 United States for approval, comments, or review,
12 prior to the submission of such recommendations,
13 testimony, or comments to the relevant congressional
14 committees.

15 **SEC. 9. COLLABORATION WITH FEDERAL AND STATE ENTI-**
16 **TIES.**

17 (a) PREEMPTION.—Nothing in this Act or any rule
18 promulgated thereunder may be construed to preempt any
19 provision of State law that provides equal or greater pro-
20 tection to consumers than is provided in this Act.

21 (b) PROGRAMS TO PROMOTE FEDERAL-STATE CO-
22 OPERATION.—The Commission shall establish a program
23 to promote Federal-State cooperation for the purposes of
24 carrying out this Act. In implementing such program, the
25 Commission may—

1 (1) accept from any State or local authority en-
2 gaged in activities relating to consumer credit pro-
3 tection assistance in such functions as data collec-
4 tion, investigation, and educational programs, as
5 well as other assistance in the administration and
6 enforcement of this Act which such States or local-
7 ities may be able and willing to provide and, if so
8 agreed, may pay in advance or otherwise for the rea-
9 sonable cost of such assistance; and

10 (2) commission any qualified officer or em-
11 ployee of any State or local agency as an officer of
12 the Commission for the purpose of conducting inves-
13 tigations.

14 (c) COOPERATION OF FEDERAL DEPARTMENTS AND
15 AGENCIES.—The Commission may obtain from any Fed-
16 eral department or agency such statistics, data, program
17 reports, and other materials as it may deem necessary to
18 carry out its functions under this Act. Each such depart-
19 ment or agency shall cooperate with the Commission and,
20 to the extent permitted by law, furnish such materials to
21 it. The Commission and the heads of other departments
22 and agencies engaged in administering programs related
23 to consumer credit safety shall, to the maximum extent
24 practicable, cooperate and consult in order to ensure fully
25 coordinated efforts.

1 **SEC. 10. PROCEDURES AND RULEMAKING.**

2 (a) COMMENCEMENT OF PROCEEDING; PUBLICATION
3 OF PRESCRIBED NOTICE OF PROPOSED RULEMAKING;
4 TRANSMITTAL OF NOTICE.—A proceeding for the develop-
5 ment of a consumer credit safety rule shall be commenced
6 by the publication in the Federal Register of an advance
7 notice of proposed rulemaking which shall—

8 (1) identify the objective or objectives specified
9 in section 6(a) for the consumer credit safety rule;

10 (2) include a summary of each of the regulatory
11 alternatives under consideration by the Commission;

12 (3) include information with respect to any ex-
13 isting voluntary standard known to the Commission
14 which may be relevant to the proceedings, together
15 with a summary of the reasons why the Commission
16 believes preliminarily that such standard does not
17 achieve an objective identified in paragraph (1);

18 (4) invite interested persons to submit to the
19 Commission, within such period as the Commission
20 shall specify in the notice (which period shall not be
21 shorter than 30 days or longer than 60 days after
22 the date of publication of the notice), comments with
23 respect to the proposed rulemaking, the regulatory
24 alternatives being considered, and other possible al-
25 ternatives for achieving the objective or objectives
26 identified in paragraph (1); and

1 (5) invite any person (other than the Commis-
2 sion) to submit to the Commission, within such pe-
3 riod as the Commission shall specify in the notice
4 (which period shall not be less than 30 days after
5 the date of publication of the notice), an existing
6 voluntary standard or a portion of such a standard
7 as a proposed consumer credit safety rule.

8 (b) TRANSMITTAL TO CONGRESS.—The Commission
9 shall transmit such notice within 10 calendar days to the
10 relevant congressional committees.

11 (c) VOLUNTARY STANDARD; PUBLICATION AS PRO-
12 POSED RULE; NOTICE OF RELIANCE OF COMMISSION ON
13 STANDARD.—If the Commission determines that any
14 standard submitted to it in response to an invitation in
15 a notice published under subsection (a)(5) if promulgated
16 (in whole, in part, or in combination with any other stand-
17 ard submitted to the Commission or any part of such a
18 standard) as a consumer credit safety rule, would achieve
19 the objective or objectives identified in paragraph (1), the
20 Commission may publish such standard, in whole, in part,
21 or in such combination and with nonmaterial modifica-
22 tions, as a proposed consumer credit safety rule.

23 (d) PUBLICATION OF PROPOSED RULE; PRELIMI-
24 NARY REGULATORY ANALYSIS; CONTENTS.—No con-
25 sumer credit safety rule may be proposed by the Commis-

1 sion unless, not later than 60 days after the date of publi-
 2 cation of the notice required in subsection (a), the Com-
 3 mission publishes in the Federal Register the text of the
 4 proposed rule, including any alternatives, which the Com-
 5 mission proposes to promulgate, together with a prelimi-
 6 nary regulatory analysis containing—

7 (1) a preliminary description of the potential
 8 benefits and potential costs of the proposed rule, in-
 9 cluding any benefits or costs that cannot be quan-
 10 tified in monetary terms, and an identification of
 11 those likely to receive the benefits and bear the
 12 costs;

13 (2) a discussion of the reasons any standard or
 14 portion of a standard submitted to the Commission
 15 under subsection (a)(5) was not published by the
 16 Commission as the proposed rule or part of the pro-
 17 posed rule; and

18 (3) a description of any reasonable alternatives
 19 to the proposed rule, together with a summary de-
 20 scription of their potential costs and benefits, and a
 21 brief explanation of why such alternatives should not
 22 be published as a proposed rule.

23 (e) TRANSMITTAL OF NOTICE.—The Commission
 24 shall transmit such notice not later than 10 calendar days

1 after the date of publication of the notice to the relevant
2 congressional committees.

3 (f) FINAL ISSUANCE.—Any proposed consumer credit
4 safety rule shall be issued within 12 months after the date
5 of publication of an advance notice of proposed rulemaking
6 under subsection (a) relating to the consumer credit in-
7 volved, unless the Commission determines that such pro-
8 posed rule is not a reasonable means of achieving the ob-
9 jective or objectives identified in subsection (a)(1) with re-
10 spect to such proposed rule or an objective specified in
11 section 6(a), or is not in the public interest. The Commis-
12 sion may extend that 12-month period for good cause. If
13 the Commission extends such period, it shall immediately
14 transmit notice of such extension to the relevant congres-
15 sional committees. Such notice shall include an expla-
16 nation of the reasons for such extension, together with an
17 estimate of the date by which the Commission anticipates
18 such rulemaking will be completed. The Commission shall
19 publish a notice of such extension and the information
20 submitted to the Congress in the Federal Register.

21 (g) PROMULGATION OF RULE.—

22 (1) TIMING.—Not later than 60 days after the
23 date of publication under subsection (c) of a pro-
24 posed consumer credit safety rule, the Commission
25 shall—

1 (A) promulgate a consumer credit safety
2 rule, if it makes the findings required under
3 subsection (h); or

4 (B) withdraw the applicable notice of pro-
5 posed rulemaking if it determines that such rule
6 is not—

7 (i) a reasonable means of achieving
8 the objective or objectives identified in sub-
9 section (a)(1) with respect to such pro-
10 posed rule or an objective specified in sec-
11 tion 6(a); or

12 (ii) in the public interest.

13 (2) EXTENSION.—The Commission may extend
14 such 60-day period in paragraph (1) for good cause
15 shown (if it publishes its reasons therefore in the
16 Federal Register).

17 (3) TITLE 5.—Consumer credit safety rules
18 shall be promulgated in accordance with section 553
19 of title 5, United States Code, except that the Com-
20 mission shall give interested persons an opportunity
21 for the oral presentation of data, views, or argu-
22 ments, in addition to an opportunity to make written
23 submissions. A transcript shall be kept of any oral
24 presentation.

1 (h) EXPRESSION OF OBJECTIVE; CONSIDERATION OF
 2 AVAILABLE PRODUCT DATA; NEEDS OF ELDERLY AND
 3 HANDICAPPED.—

4 (1) OBJECTIVES.—A consumer credit safety
 5 rule shall express in the rule itself the objectives
 6 identified in subsection (a)(1) with respect to such
 7 rule.

8 (2) CONSIDERATIONS.—In promulgating such a
 9 rule, the Commission shall—

10 (A) consider relevant available data, in-
 11 cluding the results of investigation activities
 12 conducted generally and pursuant to this Act;
 13 and

14 (B) consider and take into account the
 15 special needs of elderly individuals and individ-
 16 uals with disabilities to determine the extent to
 17 which such persons may be affected by such
 18 rule.

19 (i) FINDINGS; FINAL REGULATORY ANALYSIS; JUDI-
 20 CIAL REVIEW OF RULE.—

21 (1) FINDINGS.—Prior to promulgating a con-
 22 sumer credit safety rule, the Commission shall con-
 23 sider, and shall make appropriate findings for inclu-
 24 sion in such rule with respect to—

1 (A) the degree and nature of the benefit to
 2 consumer protection that the rule is designed to
 3 achieve or promote;

4 (B) the approximate number of consumer
 5 credit products, or types or classes thereof, sub-
 6 ject to such rule;

7 (C) the need of the public for the con-
 8 sumer credit product subject to such rule, and
 9 the probable effect of such rule upon the utility,
 10 cost, or availability of such services to meet
 11 such need; and

12 (D) any means of achieving the objective of
 13 the order while minimizing adverse effects on
 14 competition or disruption or dislocation of the
 15 provision of consumer credit.

16 (2) REGULATORY ANALYSIS.—The Commission
 17 shall not promulgate a consumer credit safety rule,
 18 unless it—

19 (A) has prepared, on the basis of the find-
 20 ings of the Commission under paragraph (1)
 21 and on other information before the Commis-
 22 sion, a final regulatory analysis of the rule con-
 23 taining—

24 (i) a description of the potential bene-
 25 fits and potential costs of the rule, includ-

1 ing costs and benefits that cannot be quan-
2 tified in monetary terms, and the identi-
3 fication of those likely to receive the bene-
4 fits and bear the costs;

5 (ii) a description of any alternatives to
6 the final rule which were considered by the
7 Commission, together with a brief expla-
8 nation of the reasons why these alter-
9 natives were not chosen; and

10 (iii) a summary of any significant
11 issues raised by the comments submitted
12 during the public comment period in re-
13 sponse to the preliminary regulatory anal-
14 ysis, and a summary of the assessment by
15 the Commission of such issues;

16 (B) finds (and includes such finding in the
17 rule)—

18 (i) that the rule (including its effective
19 date) is reasonably appropriate to achieve
20 an objective identified in subsection (a)(1)
21 with respect to such proposed rule or speci-
22 fied in section 6(a);

23 (ii) that the promulgation of the rule
24 is in the public interest; and

1 (iii) that the benefits expected from
2 the rule bear a reasonable relationship to
3 its costs.

4 (3) PUBLICATION.—The Commission shall pub-
5 lish its final regulatory analysis with the rule.

6 (4) LIMIT ON JUDICIAL REVIEW.—Any prelimi-
7 nary or final regulatory analysis prepared under
8 subsection (c) or (i)(2) shall not be subject to inde-
9 pendent judicial review, except that when an action
10 for judicial review of a rule is instituted, the con-
11 tents of any such regulatory analysis shall constitute
12 part of the whole rulemaking record of agency action
13 in connection with such review. The provisions of
14 this paragraph shall not be construed to alter the
15 substantive or procedural standards otherwise appli-
16 cable to judicial review of any action by the Commis-
17 sion.

18 (j) EFFECTIVE DATE.—Each consumer credit safety
19 rule shall specify the date on which such rule is to take
20 effect, not to exceed 180 days from the date on which it
21 is issued in final form, unless the Commission finds, for
22 good cause shown, that a later effective date is in the pub-
23 lic interest and publishes its reasons for such finding. The
24 effective date of a consumer credit safety rule under this
25 Act shall be set at a date that is at least 30 days after

1 the date of issuance in final form, unless the Commission
2 for good cause shown determines that an earlier effective
3 date is in the public interest. In no case may the effective
4 date be set at a date which is earlier than the date of
5 issuance in final form.

6 (k) AMENDMENT OR REVOCATION OF RULE.—The
7 Commission may, by rule, amend or revoke any consumer
8 credit safety rule. Such amendment or revocation shall
9 specify the date on which it is to take effect, which shall
10 not exceed 180 days from the date on which the amend-
11 ment or revocation is published, unless the Commission
12 finds for good cause shown that a later effective date is
13 in the public interest and publishes its reasons for such
14 finding. Where an amendment involves a material change
15 in a consumer credit safety rule, subsections (a) through
16 (h) shall apply. In order to revoke a consumer credit safety
17 rule, the Commission shall publish a proposal to revoke
18 such rule in the Federal Register, and allow oral and writ-
19 ten presentations in accordance with subsection (d)(2).
20 The Commission may revoke such rule only if it deter-
21 mines that the rule is not a reasonable means of achieving
22 an objective identified in subsection (a)(1) with respect to
23 such proposed rule or an objective specified in subsection
24 6(a).

1 (l) PETITION TO INITIATE RULEMAKING.—The Com-
 2 mission shall grant, in whole or in part, or deny any peti-
 3 tion under section 553 (e) of title 5, United States Code,
 4 requesting the Commission to initiate a rulemaking, with-
 5 in a reasonable time after the date on which such petition
 6 is filed. The Commission shall state the reasons for grant-
 7 ing or denying such petition.

8 **SEC. 11. PROHIBITED ACTS.**

9 It shall be unlawful for any person—

10 (1) to advertise for or offer for sale any con-
 11 sumer credit which is not in conformity with an ap-
 12 plicable consumer credit safety rule under this Act;

13 (2) to advertise for or offer for sale any con-
 14 sumer credit—

15 (A) which has been declared a banned
 16 product by a rule under this Act;

17 (B) in a manner that does not comply with
 18 any requirements for the provision of any warn-
 19 ings or other information regarding such credit;
 20 or

21 (3) to fail or refuse to permit access to or copy-
 22 ing of records, or fail or refuse to establish or main-
 23 tain records, or fail or refuse to make reports or
 24 provide information to the Commission as required

1 under this Act or any rule thereunder, other than
2 section 9.

3 **SEC. 12. PENALTIES FOR VIOLATIONS.**

4 (a) CRIMINAL PENALTIES.—

5 (1) KNOWING AND WILLFUL VIOLATIONS.—Any
6 person who knowingly and willfully violates section
7 11 after having received notice of noncompliance
8 from the Commission shall be fined not more than
9 \$500,000 or be imprisoned not more than one year,
10 or both.

11 (2) EXECUTIVES AND AGENTS.—Any individual
12 director, officer, or agent of a corporation who
13 knowingly and willfully authorizes, orders, or per-
14 forms any of the acts or practices constituting in
15 whole or in part a violation of section 11, and who
16 has knowledge of notice of noncompliance received
17 by the corporation from the Commission, shall be
18 subject to penalties under this section, without re-
19 gard to any penalties to which that corporation may
20 be otherwise subject.

21 (b) CIVIL PENALTIES.—

22 (1) IN GENERAL.—Any person who violates sec-
23 tion 11 shall be subject to a civil penalty to be estab-
24 lished at the discretion of the Commission. A viola-
25 tion of section 11 shall constitute a separate civil of-

1 fense with respect to each consumer credit trans-
2 action involved.

3 (2) PUBLICATION OF SCHEDULE OF PEN-
4 ALTIES.—Not later than December 1, 2009, and De-
5 cember 1 of each fifth calendar year thereafter, the
6 Commission shall prescribe and publish in the Fed-
7 eral Register a schedule of maximum authorized
8 penalties that shall apply for violations that occur
9 after January 1 of the year immediately following
10 such publication.

11 (3) RELEVANT FACTORS IN DETERMINING
12 AMOUNT OF PENALTY.—In determining the amount
13 of any penalty to be sought upon commencing an ac-
14 tion seeking to assess a penalty for a violation of
15 section 11, the Commission shall consider the nature
16 of the consumer credit product or service, the sever-
17 ity of the unreasonable risk to the consumer, the
18 number of products or services sold or distributed,
19 and the appropriateness of such penalty in relation
20 to the size of the business of the person charged.

21 (4) COMPROMISE OF PENALTY; DEDUCTIONS
22 FROM PENALTY.—Any civil penalty under this sec-
23 tion may be compromised by the Commission. In de-
24 termining the amount of such penalty or whether it
25 should be remitted or mitigated and in what

1 amount, the Commission shall consider the appro-
2 priateness of such penalty to the size of the business
3 of the person charged, the nature of the consumer
4 credit, the severity of the unreasonable risk to the
5 consumer, the occurrence or absence of consumer in-
6 jury, and the number of offending products or serv-
7 ices sold. The amount of such penalty when finally
8 determined, or the amount agreed on compromise,
9 may be deducted from any sums owing by the
10 United States to the person charged.

11 (c) COLLECTION AND USE OF PENALTIES.—The
12 Commission shall retain ownership over criminal and civil
13 fees collected and shall apply these fees to defray the costs
14 of the Commission’s operation or, where appropriate, pro-
15 vide restitution for harmed consumers.

16 **SEC. 13. REPORTS.**

17 (a) REPORTS TO THE PUBLIC.—The Commission
18 shall determine what reports should be produced and dis-
19 tributed to the public on a recurring and ad hoc basis,
20 and shall prepare and publish such reports on a web site
21 that provides free access to the general public.

22 (b) REPORT TO PRESIDENT AND CONGRESS.—The
23 Commission shall prepare and submit to the President and
24 the relevant congressional committees at the beginning of
25 each regular session of Congress a comprehensive report

1 on the administration of this Act for the preceding fiscal
2 year. Such report shall include—

3 (1) a thorough appraisal, including statistical
4 analyses, estimates, and long-term projections, of the
5 incidence and effects of practices associated with the
6 provision of consumer credit that are inconsistent
7 with the objectives specified in section 6(a), with a
8 breakdown, insofar as practicable, among the var-
9 ious sources of injury as the Commission finds ap-
10 propriate;

11 (2) a list of consumer credit safety rules pre-
12 scribed or in effect during such year;

13 (3) an evaluation of the degree of observance of
14 consumer credit safety rules, including a list of en-
15 forcement actions, court decisions, and compromises
16 of civil penalties, by location and company name;

17 (4) a summary of outstanding problems con-
18 fronting the administration of this Act in order of
19 priority;

20 (5) an analysis and evaluation of public and
21 private consumer credit safety research activities;

22 (6) a list, with a brief statement of the issues,
23 of completed or pending judicial actions under this
24 Act;

1 (7) the extent to which technical information
2 was disseminated to the scientific and consumer
3 credit communities and consumer information was
4 made available to the public;

5 (8) the extent of cooperation between Commis-
6 sion officials and representatives of industry and
7 other interested parties in the implementation of this
8 Act, including a log or summary of meetings held
9 between Commission officials and representatives of
10 industry and other interested parties;

11 (9) an appraisal of significant actions of State
12 and local governments relating to the responsibilities
13 of the Commission;

14 (10) with respect to voluntary consumer credit
15 safety standards promulgated as consumer safety
16 rules under section 10(c), a description of—

17 (A) the number of such standards adopted
18 as rules; and

19 (B) the nature and number of the con-
20 sumer credit products and services which are
21 the subject of such adopted rules and the ap-
22 proximate number of consumers affected;

23 (11) such recommendations for additional legis-
24 lation as the Commission deems necessary to carry
25 out the purposes of this Act; and

1 (12) the extent of cooperation with and the
2 joint efforts undertaken by the Commission in con-
3 junction with other regulators with whom the Com-
4 mission shares responsibilities for consumer credit
5 safety.

6 **SEC. 14. EFFECTIVE DATE.**

7 This Act shall be effective 120 days after the date
8 of enactment of this Act.

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